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Attorney for Martha Jean Fair

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

(FRESNO DIVISION)

In Re:)	Case No.12-12304-A-7F
)	
MARTHA JEAN FAIR,)	
)	
Debtor.)	
)	
MARTHA JEAN FAIR,)	
)	Adv. No. 15-01053-A
Plaintiff,)	
)	Chapter 7
vs.)	
)	
BANK OF AMERICA, N.A. &)	D.C. NO. THA-5
EDUCAP, INC. AND/OR)	
ASSIGNEES; et al.)	
)	
)	DATE: NONE
)	TIME: NONE
Defendants.)	DEPT.: "A", CT. RM. 11
)	JUDGE: FREDRICK CLEMENT

STIPULATION RE SETTLEMENT OF PLAINTIFF'S
NONDISCHARGEABILITY CLAIMS AGAINST NATIONAL COLLEGIATE
STUDENT LOAN TRUSTS 2006-1, 2006-2, 2006-4, 2007-2 AND,
2007-4

Martha Jean Fair, the Debtor and Plaintiff ("Fair") in the above-captioned Adversary Proceeding, by and through her attorney of record, Thomas H. Armstrong, and National Collegiate Student Loan Trusts, 2006-1, 2006-2, 2006-4, 2007-2, and 2007-4 ("National"), by and through its attorney of record Raymond F. Moates, III, Esq. of Weltman, Weinberg & Reis Co., L.P.A., enter into this Stipulation Re Settlement of Fair's Nondischargeability Claims against National ("Stipulation") and jointly represent as follows:

RECITALS

A. Fair filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code on March 16, 2012. Her discharge was entered on June 20, 2012.

B. Fair commenced the above-captioned adversary proceeding on April 22, 2015 seeking to discharge her obligations under various student loans as an undue hardship under the provisions of 11 U.S.C. §523(a)(8).

C. National timely answered the adversary complaint, and as stipulated between Fair and National, filed an Amended Answer on August 27, 2015. As set forth in National's Amended Answer, the collective approximate balance due as of the charge off date under its seven (7) student loans approximated \$178,734.07.

D. Considering the costs and time associated with litigating Fair's claims set forth in the adversary complaint, Fair and National agreed to attempt to mediate the matter through the Bankruptcy Dispute Resolution Process ("BDRP").

/ / / /

1 E. Leonard K. Welsh, Esq., was appointed as the BDRP
2 Resolution Advocate by order of the Court entered December 9,
3 2015. By letter dated December 11, 2015, Mr. Welsh provided Fair
4 and National with copies of General Order No. 95-1 regarding BDRP
5 and set January 19, 2016 as the date for the BDRP conference.

6 F. The BDRP conference occurred on January 19, 2016
7 at Mr. Welsh's office in Bakersfield, California. Fair and
8 National each submitted confidential BDRP Statements one (1) week
9 prior to the BDRP conference. Fair appeared personally with her
10 attorney, Thomas H. Armstrong. National appeared telephonically
11 as agreed between the parties and Mr. Welsh, with Bradley Luke of
12 Norcross, Georgia as National's representative, and Raymond F.
13 Moats, III as National's attorney of record.

14 G. As of the date of the BDRP conference, it was
15 represented by Mr. Luke that the collective approximate balance
16 due to National under its seven (7) student loans approximated
17 \$220,000.00.

18 H. Fair and National were invited to, and did through
19 their respective counsel, make opening statements at the BDRP
20 conference. After hearing opening statements, Mr. Welsh outlined
21 the law and the three (3) prongs needing to be proved to
22 demonstrate an "undue hardship" as set forth in In Re Brunner, 46
23 B.R. 752 (S.D.N.Y. 1985) *affd.*, 831 F.2d 395 (2nd Cir. 1997) and
24 adopted by the Ninth Circuit in In Re Pena, 155 F.3d 1108, 1112
25 (9th Cir. 1998). Mr. Welsh then met separately with Fair and her
26 counsel and National with its representative and counsel. At the
27 conclusion of BDRP, Mr. Welsh met with the parties to recite the
28 agreement that follows in the Stipulation.

STIPULATION

1. IT IS HEREBY STIPULATED AND AGREED that the Recitals set forth above in Paragraphs A through H, inclusive, are fully incorporated herein by reference.

2. IT IS HEREBY STIPULATED AND AGREED that Fair shall pay a lump sum payment of \$6,000.00 to National in full and complete satisfaction of Fair's obligations to National and without any prejudice to National as to any other obligor under the student loan notes.

3. IT IS HEREBY STIPULATED AND AGREED that, following Fair's payment of the \$6,000.00 referenced in the preceding paragraph, the remaining balance of Fair's obligations to National under the student loans are discharged as representing an "undue hardship" under 11 U.S.C. §523(a)(8).

4. IT IS HEREBY STIPULATED AND AGREED that this Settlement will in no way discharge or relieve any other obligor under any student loan held by National.

5. IT IS HEREBY STIPULATED AND AGREED that except as otherwise provided in this Stipulation, each party hereto acknowledges that she or it is familiar with, and voluntarily waives, any right or benefit arising from Section 1542 of the Civil Code of the State of California which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

6. IT IS HEREBY STIPULATED AND AGREED that no representation or promise not explicitly contained herein has been made and the Parties further acknowledge that they are not

1 entering into this Stipulation on the basis of any promise or
2 representation, express or implied.

3 7. IT IS HEREBY STIPULATED AND AGREED that all credit
4 reporting associated with Debtor's account will reflect the status
5 of the underlying loan as discharged.

6 8. IT IS HEREBY STIPULATED AND AGREED that each party
7 hereto acknowledges that he/she has authority to enter into this
8 Agreement.

9 9. IT IS HEREBY STIPULATED AND AGREED that the Parties
10 acknowledge that they have been represented by independent counsel
11 in the negotiation, preparation and execution of this Stipulation
12 and that each of them has read the Stipulation and has had the
13 opportunity to have it fully explained by their counsel prior to
14 its execution and are fully aware of its contents and legal
15 effect.

16 10. IT IS HEREBY STIPULATED AND AGREED that this
17 Stipulation may be signed in counterpart. Signatures via facsimile
18 and/or email shall be deemed originals for the purposes for this
19 Stipulation.

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IN WITNESS WHEREOF, the Parties have executed this
Stipulation on the date and year written below.


Dated: 1/26/16


Martha Jean Fair, Debtor and
the Plaintiff

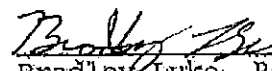
Dated: 1/26/16


Thomas H. Armstrong, Attorney
for Martha Jean Fair, Plaintiff

Dated: 2/1/16


Raymond F. Moats, III, Weltman,
Weinberg & Reis Co., L.P.A.
Attorneys for National
Collegiate Student Loan Trusts,
2006-1, 2006-2, 2006-4, 2007-2,
and 2007-4, Defendant

Dated: 2/6/16


Bradley Luke, Representative
for National Collegiate Student
Loan Trusts, 2006-1, 2006-2,
2006-4, 2007-2, and 2007-4,
Defendant